

Office Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**  
October Term, 1961

No. ~~995~~ 170

NATHAN WILLNER,

*Petitioner,*

vs.

COMMITTEE ON CHARACTER AND FITNESS, AP-  
PELLATE DIVISION OF THE SUPREME COURT  
OF THE STATE OF NEW YORK, FIRST JUDI-  
CIAL DEPARTMENT,

*Respondent.*

**BRIEF IN REPLY TO RESPONDENT'S BRIEF**

HENRY WALDMAN,  
*Attorney for Petitioner.*

HENRY WALDMAN,  
*of Counsel.*

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NATHAN WILLNER,

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**BRIEF IN REPLY TO RESPONDENT'S BRIEF**

It is apparent that respondent's position is; Petitioner, having been denied admission the first time he applied, in 1936, and his subsequent applications having been similarly denied, the denial of the instant application is justified. Which reminds us of the famous army general who came to a social gathering in uniform, his chest covered with medals. To an inquiry how he had been awarded all the medals, he said: "The first one I received by mistake and the others because of the first".

Under the heading "STATEMENT" (br. p. 3), respondent says: "On October 31, 1938, the Committee reported *unanimously, through its ten members* that it could not certify that petitioner possessed the requisite character and fitness for admission to the Bar" (Italics ours).

The interviews or conferences with applicants for admission are not conducted by the entire Committee, but by sub-committees, sometimes, of three members, usually of one. The sub-committee reports its recommendation to the whole body, which almost invariably rubber stamps its approval.

Since the reason for rejection was never disclosed to petitioner, we may be pardoned for surmising or guessing. It could be that he showed resentment at some of the questions and made sharp answers, which nettled the inquirer, or resentment of the fact that he, a certified public accountant, should seek to enter the legal profession. There are lawyers who believe that the legal profession should be open only to gentlemen. They define a gentleman as one who can trace his ancestry to William of Normandy or one of his robber barons, or to one of the barons who coerced King John to signing Magna Carta, or at least is a Mayflower descendent. In other words, a social club, which can reject a person for membership by a number of black balls, without any reason required to be given by those who dropped them in the box.

### Federal Questions Are Involved

Respondent contends (br. p. 3) that no Federal question is involved, and further, that our prior application for *certiorari* having been denied, our present application should be denied. It makes no claim that that the prior decision is *res judicata*. It has been repeatedly pointed out by many learned judges and eminent jurists, that the law is not a certain science like mathematics, but changes constantly, due to changes in the mores of the community, and economic and social changes. Law is pragmatic. The policy of the Supreme Court until comparatively recently was to refuse to take jurisdiction of matters deemed solely the concern of the states. We cited *Cohen v. Hurley*, *Koeningsberg v. State Bar* and *Schwerer v. Board of Law Examiners* to point out that this Court had taken jurisdiction in matters involving the right to practice law. Just as no two human faces are exactly alike, so no two law suits are exactly identical in the facts involved. Hence, the differences in the facts in the case at bar and in the cases cited are not material.

## **This Proceeding Is a Battle for Human Rights**

Though *coram nobis* is invoked only in criminal cases, it could well apply to this proceeding, which, after all, is one to right a wrong. So far as the record shows, the petitioner was entitled to admission to the Bar when he first applied. The report of the Character Committee was absolutely valueless, since it was based on *ex parte* statements or for reasons unknown to petitioner, for no reason was ever disclosed to him. He has tried for almost a quarter of a century to gain admission, but the Committee has coldly ignored his efforts, refusing to appear in any of the proceedings, a course of conduct tolerated by the local courts. Since no opinion or memorandum was ever handed down by any court, he is still unaware of the reasons for his rejection.

As pointed out in his petition to the Appellate Division, the report of the Committee that he was unfit to be a lawyer, affected adversely his practice as a Certified Public Accountant, for a cautious business man will hesitate to entrust the custody of his records for audit to one deemed unfit, because of lack of good character to be a member of the Bar. In a sense, his position is no better than that of an ex convict. Even time has not erased the smudge of rejection.

**It is respectfully urged that the application for a writ of *certiorari* be granted.**

Respectfully submitted,

HENRY WALDMAN,  
*Attorney for Petitioner.*

HENRY WALDMAN,  
*of Counsel.*